

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MIKLOS KONTROL,

Defendant.

Case No. 1:00-CR-82-01

Hon. Richard Alan Enslen

ORDER

Defendant Miklos Kontrol, a federal defendant who is now subject to supervised release, has filed a *pro se* motion asking that the Court grant an injunction prohibiting his supervising probation officers from directing him to answer questions as to which he has asserted his rights under the Fifth Amendment to the United States Constitution.¹ Argument as to such motion is unnecessary. *See* W.D. Mich. L. Crim. R. 47.1(d).

Upon review of such motion, the Court determines that it should be denied. Injunctive relief is presently unnecessary because Defendant is free to assert his Fifth Amendment rights explained in *Minnesota v. Murphy*, 465 U.S. 420 (1984) as a defense during revocation proceedings, should they arise. *See Ballard v. Stanton*, 833 F.2d 593, 594 (6th Cir. 1987) (holding that “bad faith” prosecution defense did not warrant stay since it could be asserted as a defense during criminal proceedings). In saying so, the Court does not encourage the assertion of the defense described in Defendant’s moving papers. It appears that Defendant has failed to understand the portion of the *Murphy* decision which differentiated between a defendant’s rights to not answer questions as to

¹The motion has been docketed by the Clerk as a “contempt motion.” Regardless of its characterization, the relief sought in the motion is not proper at this time.

which there is a realistic possibility of a separate prosecution *versus* the absence of a right to not answer questions as to which the only likely penalty is revocation of a conditional release. *See Murphy*, 465 U.S. at 436 n.7. *See also Doe v. Sauer*, 186 F.3d 903, 906 (8th Cir. 1999) (holding that prison officials may constitutionally deny parole benefits to a prisoner who asserted Fifth Amendment rights and thereby failed to participate in a program of rehabilitation).

THEREFORE, IT IS HEREBY ORDERED that Defendant Miklos Kontrol's Motion for Permanent Injunction (Dkt. No. 252) is **DENIED**.

DATED in Kalamazoo, MI:
August 27, 2007

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE